

08-02562-A

COMPLAINT
PLAINTIFF: CHARLES WADE
DEFENDANT: DAVID CLARK
JUDGE: HON. M. MCMAHUS
RELATED CASE: 08-29554

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CLERK, U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION dnes

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IN THE UNITED STATES BANKRUPTCY COURT
IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re THE BANKRUPT ESTATE OF:
DAVID CLARK,
Debtor.

Case No.: 08-29554-A-7

Adversary Case No.

CHARLES WADE,

Plaintiff,

v.

DAVID CLARK,

Defendant.

COMPLAINT FOR NON-
DISCHARGEABILITY OF DEBT
AND FOR FRAUD PURSUANT TO
11 U.S.C. 523(a)(2)(A)

Plaintiff alleges against Defendant as follows:

1 1. This Court has jurisdiction as Defendant David Clark (hereinafter referred to as
2 "Defendant") has filed for relief in the Bankruptcy Court in the Eastern District of California,
3 Sacramento Division in Case Number 08-29554-A-7.

4 2. On the date of the filing of the petition in bankruptcy herein, Plaintiff was, and is now,
5 a creditor of Defendant holding a claim provable in this proceeding.
6

7 3. This complaint to the discharge of Defendant commences an adversary proceeding
8 within the meaning of Bankruptcy Rule 7001, and is a core action pursuant to 28 U.S.C.
9 §157(b)(2)(I).

10 4. Plaintiff is a resident of the County of Sacramento.

11 5. Defendant David Clark is a resident of the County of Sacramento.

12 6. On January 27, 2005, Plaintiff loaned Defendant David Clark forty thousand dollars
13 (\$40,000.00). As part of the oral agreement, Defendant Clark agreed repay Plaintiff at the
14 maximum rate of interest within one year of date of the delivery of Plaintiff's money.
15

16 7. In reliance on such agreement, on January 27, 2005, Plaintiff delivered a check for
17 forty thousand dollars (\$40,000.00) to Defendant Clark.
18

19 8. On or about January 27, 2005, Defendant Clark endorsed such check and took
20 possession of Plaintiff's forty thousand dollars.

21 9. Since January 27, 2005, Defendant Clark has made no effort to repay Plaintiff forty
22 thousand dollars or any amount or portion thereof.
23

24 10. On August 10, 2006, Plaintiff caused his lawyer Philip Cozens to demand from
25 Defendant Clark the repayment of such funds. But Defendant Clark failed to make any
26 arrangements for the repayment of such money.
27
28

1 11. On April 1, 2005, Plaintiff loaned Defendant David Clark eighty thousand dollars
2 (\$80,000.00). As part of the oral agreement, Defendant Clark agreed repay Plaintiff at the
3 maximum rate of interest within one year of date of the delivery of Plaintiff's money.

4 12. In reliance on such agreement, on April 1, 2005, Plaintiff delivered a check for
5 eighty thousand dollars (\$80,000.00) to Defendant Clark.
6

7 13. On or about April 4, 2005, Defendant Clark endorsed such check and took
8 possession of Plaintiff's eighty thousand dollars.

9 14. Since April 1, 2005, Defendant Clark has made no effort to repay Plaintiff eighty
10 thousand dollars or any amount or portion thereof.

11 15. On August 10, 2006, Plaintiff caused his lawyer Philip Cozens to demand from
12 Defendant Clark the repayment of such funds. But Defendant Clark failed to make any
13 arrangements for the repayment of such money.
14

15 16. Defendant Clark has converted such property to his own use and has no intention of
16 repaying Plaintiff. At the time of such conversion, Defendant Clark knew such money belonged
17 to Plaintiff, but maliciously and oppressively decided not to pay Plaintiff. The acts of Defendant
18 as stated above, provide a basis for Plaintiff to obtain a judgment for nondischargeability
19 pursuant to 11 U.S.C. 523(a)(2) (A) in that Defendant used false pretenses, a false representation,
20 or actual fraud other than a statement respecting Defendant's or an insider's financial condition to
21 obtain services, money, or an extension, renewal, or refinancing of credit from Plaintiff.
22
23

24 **SECOND CAUSE OF ACTION**

25 **(For Fraud)**

26 17. Plaintiff re-alleges the allegations contained in paragraphs one through sixteen and
27 by this reference incorporates such allegations herein as though fully set forth.
28

1 18. On January 27, 2005, Defendant Clark promised that if Plaintiff loaned forty
2 thousand to Defendant Clark, that Defendant Clark would repay such money with interest at the
3 legal rate within one year of the loan.

4 19. At the time of making such promise, Defendant Clark secretly did not intend to repay
5 Plaintiff and did not intend to perform on his promise.
6

7 20. Defendant Clark made the promise to repay to induce Plaintiff to rely on the promise
8 to repay and to induce Plaintiff to lend money to Defendant Clark.

9 21. Plaintiff actually relied on Defendant Clark's promise to repay with interest. Such
10 reliance was reasonable at the time.
11

12 22. Based on his reliance on Defendant Clark's promise to repay, Plaintiff loaned forty
13 thousand dollars to Defendant Clark.

14 23. On April 1, 2005, Defendant Clark promised that if Plaintiff loaned eighty thousand
15 to Defendant Clark, that Defendant Clark would repay such money with interest at the legal rate
16 within one year of the loan.
17

18 24. At the time of making such promise, Defendant Clark secretly did not intend to repay
19 Plaintiff and did not intend to perform on his promise.

20 25. Defendant Clark made the promise to repay to induce Plaintiff to rely on the promise
21 to repay and to induce Plaintiff to lend money to Defendant Clark.
22

23 26. Plaintiff actually relied on Defendant Clark's promise to repay with interest. Such
24 reliance was reasonable at the time.

25 27. Based on his reliance on Defendant Clark's promise to repay, Plaintiff loaned eighty
26 thousand dollars to Defendant Clark.
27
28

1 28. As of September 29, 2006, Defendant Clark has made no effort to repay forty
2 thousand dollars, or eighty thousand dollars or any amount of money.

3 29. Defendant Clark committed the act alleged herein maliciously to gain Plaintiff's
4 money with no intention of repaying such money and with the wrongful intention of defrauding
5 Plaintiff of his money. In addition to a judgment for the return of his money, Plaintiff is entitled
6 to punitive damages in an amount not less than \$100,000.00
7

8 30. 11. The acts of Defendant as stated above, provide a basis for Plaintiff to obtain a
9 judgment for nondischargeability pursuant to 11 U.S.C. 523(a)(2)(A) in that Defendant used
10 false pretenses, a false representation, or actual fraud other than a statement respecting
11 Defendant's or an insider's financial condition to obtain services, money, or an extension,
12 renewal, or refinancing of credit from Plaintiff.
13

14 WHEREFORE, Plaintiff prays for judgment from the court as follows:

- 15 1. For the repayment of \$120,000.00 Plaintiff loaned to Defendant Clark and interest on
16 such money;
17
18 2. For punitive and exemplary damages in an amount not less than \$100,000.00
19
20 3. For costs of suit incurred herein; and
21
22 4. For such other, further and different relief as the court deems proper.

23 Dated October 2, 2008

Respectfully submitted,

24 

25 Philip Cozens
26 Attorney for Plaintiff
27 Charles Wade
28